ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of	)	CC Docket No. 96-187
Section 402(b)(1)(A) of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF BELL ATLANTIC

Edward D. Young, III
Michael E. Glover
Of Counsel

Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

October 24, 1996

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of	)	CC Docket No. 96-187
Section 402(b)(1)(A) of the	)	
Telecommunications Act of 1996	)	

REPLY COMMENTS OF BELL ATLANTIC[1]

I. Summary and Introduction

Section 402(b) of the new Act mandates "regulatory relief" in the form of "streamlined procedures" for all local exchange carrier ("LEC") tariff filings.[2] Many of the commenters acknowledge the requirements of the Act, and support procedures to ease the burden that current tariff rules impose on incumbent LECs. LEC competitors, however, attempt to twist this rulemaking into an opportunity to ***increase*** the burden of LEC tariff requirements. The Commission should reject such overtures. But, as AT&T acknowledges, clear statutory language can mandate "substantial changes" that would ***reduce*** the current burden of LEC tariff requirements.[3] That is exactly the mandate that must be enforced here, and the efforts of competitors to obtain regulatory advantage should be rejected.

---

1 The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

2 P.L. 104-104, § 402(b) (1996).

3 ***See*** Comments of AT&T at i (filed Oct. 9, 1996) ("AT&T Comments").

II. All LEC Tariffs Are Subject to Streamlined Filing Requirements

Section 204(a)(3) of the amended Act streamlines the requirements for any "new or revised charge, classification, regulation, or practice." As a result, most commenters, including a number of LEC customers and competitors, acknowledge that the "language contemplates eligible revisions that are much broader than merely increases and decreases in rates."[4]

Nevertheless some commenters argue that the Commission should construe the streamlining requirement to apply only to rate changes, and not to changes to other tariff terms.[5] These arguments ignore the clear language of the statute, which is not limited to rate changes. When the identical language is used in Section 204(a)(1), where the Act gives the Commission authority to suspend and investigate proposed tariff introductions or changes, it covers not just price terms, but any tariff term or condition. Moreover, as Sprint acknowledges, it would make no sense even to attempt to isolate changes in rates or costs. "Because almost any change in the terms and conditions under which an existing service is rendered will impact the overall rate or cost to the purchaser," it is appropriate to apply the Act's streamlined rules to all tariff filings, and "not just those that increase or decrease rates."[6]

---

4 Comments of the Ad Hoc Telecommunications Users Committee at 4 (filed Oct. 9, 1996).

5 ***See, e.g.***, AT&T Comments at 10; MCI Comments at 14 (filed Oct. 9, 1996).

6 Comments of Sprint Corporation at 5 (filed Oct. 9, 1996); ***see also*** Comments of the Telecommunications Resellers Association at 8 (filed Oct. 9, 1996) ("TRA does not object to the ***Notice's*** view that the provision could be read to apply to streamlined processing to LEC tariff revision which do not raise or lower rates").

As Bell Atlantic demonstrated in its comments, the streamlining requirement applies to new services as well.[7] Commenters that argue otherwise fail to own up to the fact that the provision that requires the Commission to streamline its existing procedures specifically covers "new" charges, classifications, regulations or practices.[8] Again, in its interpretation of Section 204(a)(1), the Commission has relied on this same language to support investigation of new service tariffs (as well as revisions to existing tariffs).[9]

It is unsurprising that Congress would include new services in its requirement for streamlined regulation. The Commission has acknowledged its own concern over "the delay and burden that [the] current rules may cause in introducing new services."[10] Indeed, the Commission went so far as to acknowledge that "the current system may hinder the introduction of services, a result that is harmful to customers and competition."[11] Congress reached the same conclusion and mandated that current procedures be changed. The Commission must now amend its own regulations to avoid the burdening new services. This means that it must amend its rules to comply with the specific time limits of the Act and must eliminate the Part 69 waiver requirement, which automatically extends the regulatory approval period for a new switched access service beyond the time allowed in the Act. In addition, as Bell Atlantic has previously demonstrated, to provide the

---

7 Bell Atlantic Comments at 2-4 (filed Oct. 9, 1996).

8 47 U.S.C. § 204(a)(3).

9 ***See, e.g. Bell Atlantic Telephone Companies Transmittal Nos. 741, 786***, 11 FCC Rcd 2024, 2049 (Com. Car. Bureau, 1995).

10 ***Price Cap Performance Review for Local Exchange Carriers***, 11 FCC Rcd 858, 876-77 (1995) ("Price Cap Second Further Notice").

11 **Id.** at 877.

full benefits of reform to consumers, the Commission should go even further and allow new services to be filed on one day's notice with no cost support, and no subsequent price regulation.[12]

III. The Requirement to Streamline Tariffs Provides No Excuse for Increased Regulation

LEC competitors not only seek to limit the scope of the regulatory streamlining mandated by the Act, they actually go so far as to argue that the Commission should increase the LECs' regulatory burden. The Commission should reject such arguments.

For example, LEC competitors argue that the streamlining requirements in section 402(a)(3) somehow block the Commission from using its section 10(a) authority to forebear from mandatory tariff requirements altogether.[13] This turns the deregulatory provision on its head. As GSA recognizes, "[n]othing in Section 204(a)(3) or Section 10(a) restricts the Commission's forbearance authority from applying to LECs or to the services LECs provide."[14] In fact, when the statutory conditions for forbearance are met, the Commission must forebear from applying "***any*** regulation or ***any*** provision" of the Act.[15] Where LECs can show that tariff requirements, including streamlined tariff requirements, are not necessary and that the removal of such requirements will enhance competition, the Commission must forebear from applying that regulation.

MCI would increase the tariff burden by requiring a notice to "interested parties" that must be given in advance of the official filing, thus extending the filing time for some tariffs

---

12 ***See*** Bell Atlantic Comments at 2-4; ***Price Cap Performance Review of Local Exchange Carriers***, CC Dockets 94-1, 93-124, 93-197, Comments of Bell Atlantic at 6-15 (dated Dec. 11, 1995).

13 **See** Comments of America's Carriers Telecommunications Association at 9 (filed Oct. 9, 1996); Comments of the Competitive Telecommunications Association at 5 (filed Oct. 9, 1996).

14 Comments of the General Services Administration at 8 (filed Oct. 9, 1996).

15 47 U.S.C. § 160 [Section 10] (a) (emphasis added).

beyond even the time required by current rules.[16] Other than slowing down a LEC's ability to introduce new and amended tariffs, this requirement serves no purpose. More fundamentally, by requiring a notice period beyond the maximum 7 and 15 days allowed by the statute, MCI's proposal would be unlawful.[17]

Frontier asks the Commission to impose mandatory heightened sanctions on LECs that make out-of-band filings that are subsequently found unlawful. While the streamlined requirements may not relieve price cap LECs of their obligation to support the need for an out-of-band filing, such requirements can in no way be read to increase the burden or the penalty for failing to meet those requirements. Such a rule has no support in the statutory language, and by making tariff adjustments more difficult, would have the opposite impact intended by the statute.

Finally, the deregulatory statute cannot be read to authorize regulations that would make the streamlined tariff filing more burdensome than previously required.[18] Thus, the Commission should reject arguments that LECs be required to file summaries that provide information beyond what is already provided in the current tariff description and justification.[19]

---

16 MCI Comments at 21.

17 The same is true of CompTel's argument (p. 7) for automatic rejection of LEC price cap filings that were not preceded by a pre-notice notice.

18 Likewise, it would be inconsistent with the statute for the Commission to increase the notice period for those LEC tariffs that today may be filed with less notice than the statutory maximums.

19 ***See*** Comments of Capital Cities ***et al.*** at 10 (filed Oct. 9, 1996).

IV. The Act Changed the Law by Mandating that Tariffs be "Deemed Lawful"

LEC competitors argue that the Act cannot mean what it says and that the requirement that tariffs are to be "deemed lawful" must mean something else.[20] This appears to be a case of statutory construction by wishful thinking. In fact, as PacTel demonstrated in its comments, where Congress used the word "deemed" elsewhere in the Communications Act, it intended "that a fact or legal conclusion shall be determined to be the case by operation of law."[21] Here, by operation of law, a tariff is determined to be lawful. In this context, the statute is clear that Commission inaction produces the same result that previously required an affirmative Commission action -- that a tariff be deemed lawful. Thus, the law here can be no different than the Supreme Court recognized in ***Arizona Grocery,***[22] and the determination of lawfulness must have the same effect.

AT&T complains that the Act can't possibly mean what it says because that would single out the LECs for special benefits.[23] AT&T conveniently ignores the fact that incumbent LECs are the only common carriers still regulated as dominant providers, and thus the only ones subject to more stringent tariff requirements. Reducing the burdens imposed exclusively on LECs can hardly be considered a special benefit. By protecting LECs from retroactive tariff claims, the Act moves LECs closer toward unfettered competition.

---

20 ***See, e.g.,*** AT&T Comments at 6-7; MCI Comments at 3-9.

21 ***See*** Comments of Pacific Telesis Group at 4 (filed Oct. 9, 1996) and citations therein at note nine.

22 ***Arizona Grocery Co. v. Atchison Railroad***, 284 U.S. 370 (1932).

23 AT&T Comments at 7.

While a "deemed lawful" requirement cannot be debased into a mere presumption, commenters are correct that the Act's streamlining provisions do provide a presumption of lawfulness prior to the tariff effective date. As MCI concedes, "reduced risk of suspension is consistent with the 'pro-competitive' goals of the 1996 Act."[24] Moreover, a presumption of lawfulness is consistent with the Commission's own streamlining for tariffs of nondominant carriers.[25] Thus, rather than treating its proposals relating to the "deemed lawful" requirement exclusively as alternatives, the Commission should adopt both of its proposals in an effort to achieve true streamlining of the tariff process.

V. There is No Justification for Requiring Disclosure of Proprietary Data

Several LEC competitors take issue with the Commission's efforts to protect the confidentiality of information and data submitted in conjunction with a tariff filing. These arguments appear to be premised on the unsupported assumption that a tariff "must be supported with information as available to the public as the tariff itself."[26] In fact, as Bell Atlantic has previously demonstrated in response to identical MCI arguments, there is no such legal requirement.[27] The Communications Act merely requires that tariff ***schedules*** be kept open for

---

24 MCI Comments at 5.

25 ***See*** 47 C.F.R. § 1.773(a)(ii) (tariffs of nondominant carriers are considered "***prima facie*** lawful" and will not be suspended without a showing that (A) there would be a high probability of a finding of unlawfulness, (B) the harm of tariff effectiveness outweighs the harm of suspension, (C) irreparable injury would result absent suspension, and (D) the suspension is not otherwise contrary to the public interest).

26 MCI Comments at 26.

27 ***See Proprietary of "Secret" Support Offered by Local Exchange Carriers to Justify their Proposed Interexchange Access Tariffs***, Opposition of Bell Atlantic to Petition for Declaritory Ruling (filed May 5, 1995).

public inspection.[28] Nowhere is there any requirement for public supporting material. The only requirement for filing supporting information is contained in the Commission's administrative rules.[29] These rules cannot supersede the requirements in the Freedom of Information Act that mandate that trade secrets and other confidential information be withheld from public inspection. More fundamentally, as competition becomes more pervasive, the parties seeking to view proprietary cost support are present or future competitors for those same services. Regardless of the basis of the rule, continuing the requirement makes no sense in today's market. Forbearance[30] or elimination of this unnecessary requirement would definitively resolve any concerns over the public release of competitively sensitive proprietary information.

VI. Streamlined Administration Should Accompany Streamlined Requirements

As many commenters acknowledge, in order to accommodate streamlined tariff regulation, the Commission must streamline its rules. The Commission has offered the reasonable suggestion that comments on streamlined filings be due three days after the date of the filing and replies two days after service of any petition.[31] Some parties have argued that to ease the burden on commenters, the filings should be calculated on a calendar day basis. But this would leave inadequate time for Commission review, and would make the filings meaningless.

---

28 47 U.S.C. § 203(a).

29 ***See*** 47 C.F.R. § 61.38.

30 The Act requires that the Commission forbear from any regulation if it can be shown that such a regulation is unnecessary and that forbearance will benefit competition. 47 U.S.C. § 160 [Section 10] (a).

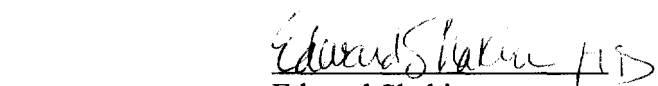
31 Notice, ¶¶ 27-28.

Commenters are generally supportive of moving toward electronic filings. To ensure that such a change does not inadvertently create new burdens, the Commission should adopt the suggestions of Communications Image Technologies and create an industry working group to make recommendations concerning the functional requirements of an electronic fling system.[32]

Conclusion

The Commission should implement LEC tariff streamlining consistent with the recommendations set forth in Bell Atlantic's initial and reply comments.

Respectfully submitted,



Edward Shakin

1320 North Court House Road
Eighth Floor
Arlington, VA 22201
(703) 974-4864

Attorney for the
Bell Atlantic Telephone Companies

Edward D. Young, III
Michael E. Glover
Of Counsel

October 24, 1996

32 See CITI Comments at 2-3 (filed Oct. 9, 1996).

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 1996 a copy of the foregoing "Reply Comments of Bell Atlantic" was served on the parties on the attached list.

Tracey DeVaux

Tracey DeVaux

* Via hand delivery.

Jerry McKoy*
Federal Communications Commission
Common Carrier Bureau
1919 M Street, NW
Room 518
Washington, DC 20554

(Hard copy and diskette version)

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554